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Attorneys for Defendant  
WELLS FARGO BANK, N.A.,  
successor by merger with Wells Fargo  
Bank Southwest, N.A., f/k/a Wachovia  
Mortgage, FSB, f/k/a World Savings  
Bank, FSB (“Wells Fargo”)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROSE R. RAMIREZ, an individual

Plaintiff,

v.

WELLS FARGO BANK, N.A.; and  
Does 1 through 50, Inclusive,

Defendants.

CASE NO.: 2:17-cv-2688

**NOTICE OF REMOVAL BY  
DEFENDANT WELLS FARGO,  
PURSUANT TO 28 U.S.C. § 1332  
[DIVERSITY JURISDICTION]**

**TO PLAINTIFF, HER COUNSEL OF RECORD, THE CLERK OF THE  
ABOVE-ENTITLED COURT, AND THE HONORABLE UNITED STATES  
DISTRICT JUDGE, AS ASSIGNED:**

**PLEASE TAKE NOTICE** that defendant WELLS FARGO BANK, N.A.,  
successor by merger with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia  
Mortgage, FSB, f/k/a World Savings Bank, FSB (“Wells Fargo”) hereby provides  
this Notice of Removal pursuant to 28 U.S.C. § 1332.

**1. THE STATE COURT ACTION.**

On March 2, 2017, plaintiff Rose R. Ramirez commenced an action in the  
Superior Court of the State of California, County of Los Angeles, Case No.  
KC069103 (the “State Court Action”). Defendant Wells Fargo did not appear in

1 the State Court Action. A copy of the Complaint is attached hereto as Exhibit A.  
 2 Attached collectively hereto as Exhibit B are all other documents in Wells Fargo's  
 3 possession from the State Court Action.

4 On March 3, 2017, plaintiff obtained an unopposed temporary restraining  
 5 order from the Superior Court, enjoining Wells Fargo's foreclosure on the subject  
 6 property. (*See Exhibit B.*) On March 23, 2017, the parties entered into a  
 7 stipulation continuing the OSC re: Preliminary Injunction. Wells Fargo will  
 8 postpone the trustee's sale to a date no earlier than May 30, 2017 should plaintiff  
 9 wish to pursue relief following this removal.

10 **2. DIVERSITY OF CITIZENSHIP JURISDICTION:**

11 This Court has jurisdiction of this case under 28 U.S.C. § 1332 because the  
 12 citizenship of the parties is entirely diverse and the amount in controversy exceeds  
 13 \$75,000.

14 **A. Complete Diversity.**

15 Complete diversity under 28 U.S.C. § 1332 exists because no defendant is a  
 16 citizen of a state in which plaintiff is a citizen. Plaintiff is a citizen of California  
 17 and defendant Wells Fargo is a citizen only of South Dakota.

18 **i. Plaintiff's Citizenship.**

19 Plaintiff is a California citizen, based on domicile, as she plead ownership of  
 20 a property located at 108 Prairie Drive, San Dimas, California 91773 – *i.e.*, the  
 21 subject property in this action ("Property"). (Compl ¶¶1, 10, 11; Exh. H, [Deed of  
 22 Trust]). In addition, plaintiff has made a claim for the Property of a recorded  
 23 Homeowner's Exemption, which is only available to owners who occupy their  
 24 homes as their principal place of residence on December 31, and each year  
 25 thereafter. *Cal. Rev. & Tax. Code* §218(a); Los Angeles County Assessor  
 26 information indicating a homeowner's exemption was taken, Exhibit C, attached  
 27 hereto.  
 28

1 Plaintiff pleads that she has been trying to obtain a loan modification under  
 2 the California Homeowners' Bill of Rights (Compl. ¶¶ 44-46, 50-51), which only  
 3 applies to owner-occupied dwellings that are the borrower's primary residence,  
 4 pursuant to Civil Code § 2924.15.

5 Further evidence of plaintiff's domicile in California can be found in the  
 6 Voluntary Petition for Chapter 7 Bankruptcy which plaintiff filed in the United  
 7 States Bankruptcy Court for the Central District of California (Los Angeles ), Case  
 8 No. 2:12-bk-16668-TD. (*See Exhibit D* hereto [pertinent portion of the bankruptcy  
 9 petition].) In her bankruptcy petition filed on February 24, 2012, plaintiff listed  
 10 the Property as her primary address and stated under penalty of perjury that  
 11 plaintiff listed the subject property as her primary address and stated under penalty  
 12 of perjury that she has "been domiciled or have had a residence, principal place of  
 13 business, or principal assets in this District for 180 days immediately preceding the  
 14 date . . ." of the petition. (*Id.* at p. 1–2).

15 On August 25, 2016, plaintiff alleges that she submitted a Request for  
 16 Mortgage Assistance to Wells Fargo in which she asserts, under penalty of perjury,  
 17 that her principal residence is the subject property. Plaintiff also maintains a  
 18 business checking account with Pacific Western Bank using her business address  
 19 in Glendora, California. Plaintiff utilizes the Property address for tax returns, the  
 20 Social Security Administration, Capital One and Barclaycard credit cards, Time  
 21 Warner Cable and DirecTV.

22 Upon information and belief, plaintiff in this action resides in California  
 23 with the intention to remain indefinitely. "A person's domicile is her permanent  
 24 home, where she resides with the intention to remain or to which she intends to  
 25 return." See e.g., *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. Cal.  
 26 2001); *Heinz v. Havelock*, 757 F. Supp. 1076, 1079 (C.D. Cal. 1991) (residence  
 27 and property ownership is a factor in domicile for diversity jurisdiction); *State*  
 28 *Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) ("Residence

1 alone is not the equivalent of citizenship, **but the place of residence is prima**  
 2 **facie the domicile**.”). (emphasis added).

3 **ii. Wells Fargo Bank, N.A. is a Citizen of South Dakota.**

4 Effective December 31, 2007, World Savings Bank, FSB, changed its name  
 5 to Wachovia Mortgage, FSB. (Exh. E [Nov. 19, 2007 OTS Letter].) Effective  
 6 November 1, 2009, Wachovia Mortgage, FSB, was converted to Wells Fargo Bank  
 7 Southwest, N.A., and merged into Wells Fargo Bank, N.A. (Exh. F [Nov. 1, 2009  
 8 OCC Certification Letter].) The citizenship of the surviving entity from a merger,  
 9 here Wells Fargo Bank, N.A., is used to determine citizenship. *Meadows v.*  
 10 *Bicrodyne Corp.*, 785 F.2d 670, 672 (9th Cir. 1986) (using citizenship of surviving  
 11 entity for diversity).

12 Pursuant to 28 U.S.C. § 1348, defendant Wells Fargo Bank, N.A., as a  
 13 national banking association, is a citizen of the state where it is “located.” In 2006,  
 14 the United States Supreme Court, after a thorough examination of the historical  
 15 versions of § 1348 and the existing case law, held that “a national bank, for § 1348  
 16 purposes, is a citizen of the State in which its main office, as set forth in its articles  
 17 of association, is located.” *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306-307  
 18 (2006).

19 Wells Fargo, with its main office located in Sioux Falls, South Dakota, is a  
 20 citizen of South Dakota. Attached hereto as Exhibit G are true and correct copies  
 21 of the FDIC Profile and the Articles of Association for Wells Fargo Bank, National  
 22 Association, as issued by the Office of the Comptroller of the Currency,  
 23 Administrator of National Banks, reflecting that Wells Fargo (at Article II, § 1) has  
 24 its main office in Sioux Falls, South Dakota. *Rouse, et al. v. Wachovia Mortgage,*  
 25 *FSB*, 747 F.3d 707, 715, at \*22 (9th Cir. Mar. 27, 2014) (“ under § 1348, a national  
 26 banking association is a citizen only of the state in which its main office is  
 27 located.” ); *Wells Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 710 (8th  
 28 Cir. Sept. 2, 2011); *Mireles v. Wells Fargo Bank N.A.*, 845 F. Supp. 2d 1034,

1 1059-61 (C.D. Cal. 2012); *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d  
 2 1119, 1124 (N.D. Cal. 2010); *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d  
 3 1022, 1028 (N.D. Cal. 2010) (“Wells Fargo is a citizen of South Dakota for  
 4 purposes of diversity.”).

5 **ii. Summary of Diversity of Citizenship.**

6 As these facts establish, complete diversity of citizenship exists between  
 7 plaintiff and defendants under 28 U.S.C. § 1332(a) in that plaintiff is citizen of  
 8 California and Wells Fargo, is a citizen of South Dakota.

9 **4. AMOUNT IN CONTROVERSY.**

10 Generally, “[t]he amount in controversy is determined from the allegations  
 11 or prayer of the complaint.” *Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc.*  
 12 *Before Trial* (2009), ¶2:450 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*,  
 13 303 U.S. 283, 289 (1938), which held that an inability to recover an amount  
 14 adequate to give the court jurisdiction does not oust the court of jurisdiction).  
 15 Moreover, “[i]n actions seeking declaratory or injunctive relief, it is well  
 16 established that the amount in controversy is measured by the value of the object  
 17 of the litigation.’ ‘If the primary purpose of a lawsuit is to enjoin a bank from  
 18 selling or transferring property, then the property is the object of the litigation.’”  
 19 *Reyes v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist. LEXIS 113821, at \*12-\*13  
 20 (N.D. Cal. June 29, 2010). *See also Chapman v. Deutsche Bank Nat’l Trust Co.*,  
 21 651 F.3d 1039, 1045 n.2 (9th Cir. 2011) (per curiam) (in an action seeking  
 22 injunctive relief, the “amount in controversy is measured by the value of the object  
 23 of the litigation” (citation and internal quotation marks omitted)); *O’Connor v.*  
 24 *BankUnited*, 594 Fed. Appx. 329 (9th Cir. 2015).

25 Where a complaint seeks to restrain a trustee’s sale, the loan debt or value  
 26 of the property is considered to be the jurisdictional amount in controversy.  
 27 *Gonzales v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 152700, \*4-\*5 (N.D.  
 28 Cal. Oct. 28, 2014) (“The most recent notice of trustee’s sale lists the unpaid

1 amount owed under the deed of trust as just under \$700,000. . . Therefore, the  
 2 value of the Property easily satisfies the jurisdictional amount. The Court, thus,  
 3 denies Plaintiff's motion to remand.”). “Where injunctive relief is sought, ‘the  
 4 amount in controversy is measured by the object of the litigation.” *Major v. Wells*  
 5 *Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 114977, at \*3-\*4 (S.D. Cal. Aug. 15,  
 6 2014). “In actions arising out of the foreclosure of a plaintiff’s home, the amount  
 7 in controversy may be established by the value of the property or by the value of  
 8 the loan.” *Id.*; *accord Mouri v. Bank of N.Y. Mellon*, 2014 U.S. Dist. LEXIS  
 9 170365, at \*10-\*12 (C.D. Cal. Dec. 9, 2014).

10 Plaintiff obtained a residential home loan in the amount of \$564,000.00 from  
 11 World Savings Bank, FSB (Wells Fargo’s predecessor), which was memorialized  
 12 by a promissory note and secured by the Property. (See Exhibit H [Deed of Trust].  
 13 Plaintiff suffered financial hardship and sought loss mitigation assistance in 2014  
 14 and again in 2015. (Compl. ¶¶13, 22.) Plaintiff defaulted on her loan obligations  
 15 and, as a result, Wells Fargo commenced a non-judicial foreclosure by recording a  
 16 Notice of Default on December 23, 2015, evidencing loan arrears of \$324,352.44.  
 17 (See Exhibit I [Notice of Default].) On August 26, 2016, a Notice of Trustee’s  
 18 Sale was recorded, which reflects that the total unpaid debt owed to Wells Fargo  
 19 stands at \$887,658.03. ([See Exhibit J - Notice of Sale].) Although, plaintiff has  
 20 been in default for nearly nine years, she seeks a permanent injunction enjoining  
 21 the foreclosure sale. (Prayer ¶2.)

22 Plaintiff claims violations of the Homeowner’s Bill of Rights, alleging Wells  
 23 Fargo failed to appoint a single point of contact (Civil Code §2923.7), (Compl.  
 24 ¶¶44-55); failed to provide a denial letter (Civil Code §2923.6), (Compl. ¶¶46-47);  
 25 failed to comply with the due diligence requirements prior to recording the notice  
 26 of default (Civil Code §2923.55), (Compl. ¶¶48-50) and was not given the  
 27 opportunity to reinstate the loan (Civil Code §2924c), (Compl. ¶51).



1 Plaintiff also asserts claims for violations of Business and Professions Code  
 2 §17200 for engaging in unfair and fraudulent business practices (Compl. ¶54);  
 3 breach of the implied covenant of good faith and fair dealing wherein Wells Fargo  
 4 interfered with plaintiff's ability to perform under the contract by impairing her  
 5 ability to get current on the loan (Compl. ¶65) and negligence for failing to provide  
 6 a timely, accurate and good faith loan modification review (Compl. ¶79).

7 Based thereon, plaintiff seeks a judicial declaration that she be reviewed for  
 8 a loan modification (Prayer ¶1), unspecified actual, general, special and  
 9 consequential damages (Prayer ¶¶4-7), disgorgement of profits (Prayer ¶3),  
 10 prejudgment interest (Prayer ¶9) and attorneys' fees and costs (Prayer ¶¶8, 10).

11 Should plaintiff prevail in this action, Wells Fargo would be enjoined from  
 12 taking further action under its secured interest in the Property, despite plaintiff's  
 13 default on her loan obligations -- which would result in a loss of, at a minimum,  
 14 the original principal loan amount of \$564,000.00, which today stands at more than  
 15 \$887,000, and for a default amount exceeding \$300,000.

16 Consequently, the amount in controversy clearly exceeds the \$75,000.00  
 17 threshold.

## 18 **5. TIMELINESS.**

19 This Notice is timely, pursuant to 28 U.S.C. § 1446(b), because Wells Fargo  
 20 received service of process on March 8, 2017. Defendant Wells Fargo has not  
 21 generally appeared in the State Court Action. *Destfino v. Reiswig, et al.*, 630 F.3d  
 22 952, 956 (9<sup>th</sup> Cir. Cal. 2011) ("we hold that each defendant is entitled to thirty  
 23 days to exercise his removal rights after being served").

24 As no doe defendants have been identified or served at this time, no joinder  
 25 of unserved defendants is required to perfect removal of the State Court Action.  
 26 *Salveson v. Western States Bankcard Ass'n.*, 730 F.2d 1423, 1429 (9<sup>th</sup> Cir. 1984).

1 **6. INTRADISTRICT ASSIGNMENT.**

2 This case is being removed to the Central District, Western Division of this  
3 Court because the existing State Court Action is pending in Los Angeles County.

4 **7. OTHER PERTINENT INFORMATION.**

5 A. Pursuant to 28 U.S.C. § 1446(a), defendant Wells Fargo files this  
6 Notice in the District Court of the United States for the district and division within  
7 which the State Court Action is pending.

8 B. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice and its  
9 attachments will promptly be served on plaintiff in the State Court Action, and  
10 notice thereof will be filed with the clerk of the Los Angeles County Superior  
11 Court.

12 **WHEREFORE**, Defendant Wells Fargo hereby removes Los Angeles  
13 County Superior Court Case No. KC069103 to the United States District Court for  
14 the Central District of California, Western Division.

15 Respectfully submitted,

16 Dated: April 7, 2017

17 ANGLIN, FLEWELLING, RASMUSSEN,  
18 CAMPBELL & TRYTTEN LLP

19 By: /s/ Jeremy E. Shulman

20 Jeremy E. Shulman  
21 jshulman@afrc.com  
22 Attorneys for Defendant  
23 WELLS FARGO BANK, N.A.  
24  
25  
26  
27  
28

ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP



1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to  
 3 this action. I am employed in the City of Pasadena, California; my business  
 4 address is Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP, 301 N. Lake  
 Ave, Suite 1100 Pasadena, CA 91101-4158

5 On the date below, I served a copy of the foregoing document entitled:

6 **NOTICE OF REMOVAL BY DEFENDANT WELLS FARGO,**  
 7 **PURSUANT TO 28 U.S.C. § 1332 [DIVERSITY JURISDICTION]**

8 on the interested parties in said case as follows:

9 **Served By Means Other than Electronically Via the Court's**  
**CM/ECF System**

10 *Attorneys for Plaintiff*  
 11 *Rose R. Ramirez*

12 Randolph Roger Ramirez, Esq.  
 13 LAW OFFICES OF RANDOLPH ROGER RAMIREZ, PC  
 14 1613 Chelsea Road, Suite 186  
 San Marino, CA 91108

15 Tel: 626.765.5411 | Fax: 626.784.0480

16 ☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and  
 17 processing correspondence by mailing. Under that same practice it would  
 18 be deposited with U.S. Postal Service on that same day with postage fully  
 19 prepaid at Pasadena, California in the ordinary course of business. I am  
 aware that on motion of the party served, service is presumed invalid if  
 postal cancellation date or postage meter date is more than one day after  
 date of deposit for mailing in affidavit.

20 I declare under penalty of perjury under the laws of the United States of  
 21 America that the foregoing is true and correct. I declare that I am employed in  
 22 the office of a member of the Bar of this Court, at whose direction the service  
 was made. This declaration is executed in Pasadena, California on April 7, 2017.

23 Lina Velasquez

24 (Type or Print Name)

/s/ Lina Velasquez

(Signature of Declarant)